

## REMARKS

The present amendment is in response to the Office Action dated September 29, 2009. Claims 1-17 and 26-31 are pending in this case. Claims 26-31 have been indicted as withdrawn. By this amendment, no claims have been amended, no claims have been canceled, and no new claims have been added

### **Rejection of claims 1 and 9 under 35 USC § 103**

Claims 1 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,570,389 issued to Rossi in view of U.S. Patent No. 5,600,635 issued to Hamaki et al. and further in view of U.S. Patent No. 5,844,473 issued to Kaman and U.S. Patent No. 7,085,553 issued to Harrenstien et al.

As acknowledged in the Office Action, neither Rossi nor Hamaki et al. disclose “sending call record information related to usage of the wireless voice traffic channel from the wireless transceiver unit to the wireless base unit over the wireless control channel.” (Page 4, lines 1-4). Kaman is cited for this claim element. Specifically, the Office Action states “Kaman teaches in response to the information request message, sending call record information related to usage of the wireless voice traffic channel from the wireless transceiver unit to the wireless base unit over the wireless control channel (see column 5, lines 53-63, also see Abstract).”

At column 5, lines 53-63, Kaman states the following:

Under the embodiment, where the vehicle collection unit 10 receives a packet from a requester (e.g., central computer 38) addressed to the unit 10 requesting indicia of usage, the controller 18 retrieves such information from RAM 14, along with the ID of the requester 38 and composes a data packet in response to the request. Contained within the packet is an ID identifying the requester 38 as the communication target of the transmission. Contained within the body of the packet is the data requested (e.g., the contents of the clock 16) and the ID of the transmitting data collection unit 10.

The above passage does not even mention either call record information or usage of the wireless voice traffic channel.

The Abstract states the following:

An apparatus for remotely collecting and reporting an indicia of use of a vehicle. The apparatus includes an accumulator of the indicia of vehicle

use operably coupled to the vehicle and a transceiver coupled to the accumulator and responsive to a received information request for transmitting the indicia of vehicle use.

Nothing in the entirety of the Abstract mentions call record information related to usage of the wireless voice traffic channel. Instead, the Abstract discusses indicia of use of a vehicle, which has nothing whatsoever to do with usage of a voice traffic channel.

Kaman discloses vehicle collection units 10 each configured to transmit vehicular information (e.g., vehicle activation times, engine oil level, radiator fluid level, etc.) from a vehicle to a central computer 38 operating through the PSTN 40 and a cellular system 42 to form a central data collection unit 30 “programmed to collect data from each of the vehicle collection units 10 at predetermined time intervals (e.g., once every 30 days).” (Column 2, lines 31-49, and column 4, lines 15-17). Kaman is not concerned with call record information related to the usage of a wireless voice traffic channel or sending such information over a control channel.

“The Patent and Trademark Office (‘PTO’) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005) (*en banc*) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004), emphasis added). Using this standard, the claim element reciting “call record information related to usage of the wireless voice traffic channel” cannot be read on “indicia of use of a vehicle.” The Examiner has cited a reference that simply does not teach that which the Examiner asserts.

Further, as motivation to combine Kaman with other references, the Office Action states the combination would “provide an apparatus for remotely collecting and reporting an indication of use of a vehicle.” (See page 4, lines 11-12, emphasis original). However, this is precisely what is disclosed by Kaman. Therefore, Kaman need not be combined with any other reference to provide such an apparatus. Thus, the Office Action provides no motivation to combine the references to achieve the claimed invention and the only motivation for such a combination is provided by

Applicants' own specification. In other words, hindsight was improperly used to arrive at the proposed combination of references instead of a rational that may be "expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law." MPEP § 2144 (*citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992)).

Harrenstien et al. was cited in a previous Office Action mailed December 16, 2008. As acknowledged in that Office Action, Harrenstien et al. fails to disclose a wireless transceiver unit and a wireless base unit "configured to communicate over a wireless control channel and a voice traffic channel, the polling method comprising: sending, call record information related to usage of the voice traffic channel over the control channel in response to the information request message." (Office Action of December 16, 2008, page 4, lines 10-14). Thus, Harrenstien et al. does not cure the deficiencies of the other references.

Therefore, withdrawal of this ground for rejection and allowance of claim 1 and claims 2-8 that depend from claim 1 is respectfully requested.

Independent claim 9 recites a polling method that includes "sending an information request message from the wireless base unit to the wireless transceiver unit over a wireless communication channel, the information request message requesting call record information related to usage of the wireless voice traffic channel." As explained above, none of the cited references alone or in hypothetical combination teach or suggest "call record information related to usage of the wireless voice traffic channel." Therefore, withdrawal of this ground for rejection and allowance of claim 9 and claims 10-17 that depend from claim 9 is respectfully requested.

### **Rejection of claims 2, 3, 5, 8, 10, 11 and 14-17 under 35 USC § 103**

Claims 2, 3, 5, 8, 10, 11, and 14-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rossi in view of Hamaki et al. and further in view of Kaman and, and further in view of Harrenstien et al., and further in view of U.S. Patent No. 5,315,636 issued to Patel.

The inapplicability of the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. has been discussed in detail with respect to claims 1 and 9. Patel was cited in a previous Office Action mailed December 16, 2008. In an Amendment filed on March 16, 2009, Applicants explained that Patel does not teach or suggest “polling is initiated in response to a detected problem (see column 3, lines 15-25 and column 10, lines 24-44)” as also asserted in the present Final Office Action. The Office Action provides no response to this argument whatsoever. If after reviewing this response, the Examiner wishes to issue a new ground for rejection but continue to cite Patel as teaching polling initiated in response to a detected problem, Applicants respectfully request a response the following argument.

Patel discloses a personal telecommunications system that enables a subscriber to have a single personal telephone directory number. As explained at column 3, lines 15-25 of Patel, the location of the subscriber is determined by a plurality of radio base stations that periodically poll their surrounding area for proximately located subscriber personal communicators. Each personal communicator in the area responds by notifying the polling base station of the subscriber's presence. This location information is then relayed to a service node.

At column 10, lines 24-44 of Patel, a base station coupled to a vehicle is described. In a base station coupled to a vehicle, the base station powers up when the vehicle is started. (Column 10, lines 27-30). If the personal communicator is not functioning, an alarm is triggered because the base station will assume an unauthorized person has started the vehicle. (Column 10, lines 32-36). The alarm trigger is a single event and is not polling. On the other hand, “[w]hen the vehicle is turned off, the base station 28 therein maintains power for long enough to send a message to the service node that the subscriber is no longer present for communication at the vehicle's cellular phone.” (Column 10, lines 38-42, emphasis added). This “automatic polling” feature is also provided in other remote base station in the event of a power failure. (Column 10, lines 42-44). While described as “automatic polling,” those of ordinary skill in the art would not interpret a single message sent to a service node as “polling” as described in the present application and claimed in claims 2, 3, 5, 8, 10, 11, and 14-17. Further, Patel does not teach “initiating the repeated receiving and sending in response to

detecting the communication failure (see column 3, lines 15-25 and column 10, lines 24-44)” as asserted in the Office Action at page 7, lines 1-3.

Thus, contrary to the assertions in the Office Action, Patel does not teach polling is initiated in response to a detected problem. Instead, the cited portions of the reference teach (1) polling after powering up, and (2) sending a message to the service node following a power failure. Therefore, withdrawal of this ground for rejection of claims 2, 3, 5, 8, 10, 11, and 14-17 is respectfully requested.

#### **Rejection of claims 4 and 12 under 35 USC § 103**

Claims 4 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rossi in view of Hamaki et al. and further in view of Kaman and Harrenstien et al. and further in view of Patel and U.S. Patent No. 6,058,420 issued to Davies.

The inapplicability of the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. has been discussed in detail with respect to claims 1 and 9. Claim 4 depends from claim 1 and claim 12 depends from claim 9. Therefore, claims 4 and 12 are allowable over the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. for at least the reasons presented above.

Davies teaches sending polling messages that determine whether an interface is failing and has nothing whatsoever to do with sending or receiving call record information. Therefore, Davies fails to cure the deficiencies of Rossi, Hamaki et al., Kaman, Harrenstien et al., and Patel. Withdrawal of this ground for rejection is kindly requested.

#### **Rejection of claims 6 and 7 under 35 USC § 103**

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rossi in view of Hamaki et al. and further in view of Kaman and Harrenstien et al. and further in view of U.S. Patent No. 6,014,374 issued to Paneth et al.

The inapplicability of the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. has been discussed in detail with respect to claims 1 and 9. Claims 6 and 7 both depend from claim 1 and are allowable over the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. for at least the reasons presented above.

Paneth et al. does not teach or suggest sending or receiving call record information related to usage of the wireless voice traffic channel over a wireless control channel in response to an information request message requesting such information. Therefore, Paneth et al. fails to cure the deficiencies of Rossi, Hamaki et al., Kaman, and Harrenstien et al. Withdrawal of this ground for rejection is kindly requested.

**Rejection of claim 13 under 35 USC § 103**

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rossi in view of Hamaki et al. and further in view of Kaman and Harrenstien et al. and further in view of U.S. Patent No. 6,347,092 issued to Serikawa.

The inapplicability of the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. has been discussed in detail with respect to claims 1 and 9. Claim 13 depends from claim 9 and is allowable over the combination of Rossi, Hamaki et al., Kaman, and Harrenstien et al. for at least the reasons presented above. Serikawa et al. fails to cure the deficiencies of Rossi, Hamaki et al., Kaman, and Harrenstien et al. because Serikawa et al. does not teach or suggest sending or receiving call record information related to usage of the wireless voice traffic channel over a wireless control channel in response to an information request message requesting such information. Instead, Serikawa et al. discloses a time division multiple access communication technique. Withdrawal of this ground for rejection is kindly requested.

No fee is believed due. If additional fees are believed necessary, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 04-0258 of Davis Wright Tremaine LLP.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

If questions remain regarding this application, the Examiner is invited to contact the undersigned at (206) 757-8021.

Respectfully submitted,  
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